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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,064	03/01/2002	Raymond T. Hemmings	109/1/001 N	3246

23565 7590 07/17/2003

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EXAMINER

GREEN, ANTHONY J

ART UNIT	PAPER NUMBER
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1755

DATE MAILED: 07/17/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/087,064

Applicant(s)

HEMMINGS ET AL.

Examiner

Anthony J. Green

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-- **Th MAILING DATE** of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,5,6 6) ☐ Other:

## DETAILED ACTION

### *Response to Restriction Requirement*

Based on applicant's response submitted on 09 JUNE 2003, claims 18-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 11-17 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the use of a calcium aluminosilicate glass, does not reasonably provide enablement for the use of any type of glass material. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the invention commensurate in scope with these claims.

Note that the specification states that the invention concerns the use of a calcium aluminosilicate glass and accordingly this feature should appear in all of the independent claims.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 the use of the phrases "low alkali" and "low iron" renders the claim vague and indefinite as "low" is a relative term.

In claim 2 the phrase "low levels of discolorants" renders the claim vague and indefinite as "low" is a relative term.

In claim 4 the phrase "high aspect" renders the claim vague and indefinite as "high" is a relative term.

In claim 5 it is unclear as to what the terms "P.S.D." and "E.S.D." represent.

In claims 11, 13 and 14 the phrases "low alkali" and "low iron" renders the claim vague and indefinite as "low" is a relative term.

Claim 15 contains improper Markush terminology as the term "or" should be --and --.

Claim 16 is inconsistent with claim 12 as claim 12 is not specifically directed to a "white cement".

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by POTTER et al (US Patent No. 4,438,212) [It should be noted that this reference is equivalent to UK Patent Application No. 2,122,986].

The reference teaches, in column 1, lines 40+ and the examples and the claims, the formation of fluorine free calcium-aluminosilicate glasses having from 0 to 4% of alkali metal oxide and from 0.5 to 9% of alkali metal oxide + titanium oxide. Column 1, lines 62+ teach that the glasses are useful in the manufacture of water-hardenable cement compositions. Column 2, lines 45+ teach that after manufacture the glass may be converted to finely divided form in a conventional manner.

The instant claims are met by the reference as the reference teaches the formation of a calcium aluminosilicate glass in finely divided form possessing little or no alkali metal and no iron which is useful in cement compositions.

#### ***Claim Objections***

7. Claim 1 is objected to because of the following informalities: The term "auminio" should be -- alumino --. Appropriate correction is required.

#### ***Information Disclosure Statement***

8. The references submitted by applicant have been considered however they are not seen to teach and/or fairly suggest the instant invention.


#### ***References Cited By The Examiner***

9. The remaining references are cited as showing the general state of the art and as such they are not seen to teach and/or fairly suggest the instant invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony J. Green whose telephone number is 703-308-3819. The examiner can normally be reached on Monday-Thursday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark L. Bell can be reached on 703-308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Anthony J. Green  
Primary Examiner  
Art Unit 1755

ajg  
July 14, 2003